

901:10-5-01 Complaints.

(A) A person may submit a complaint to the director of the Ohio department of agriculture related to a concentrated animal feeding facility or to a discharge from an animal feeding operation, as defined in 40 CFR 122.23 .

(B) The complaint may be made orally or in writing.

(1) Complaint in writing: If the complaint is made in writing, the person making the complaint must sign and date the complaint. In addition, the following shall be included:

(a) The address of the facility.

(b) A description of the nature of the complaint.

(2) Oral Complaint: If a complaint is made orally to the director or to one of the director's representatives the following shall be included:

(a) The address of the facility.

(b) A description of the nature of the complaint.

(c) The name and address of the person reporting the oral complaint is optional so that the person reporting the oral complaint may be notified of the dismissal of the complaint or notified if the director determines that the director is proceeding in accordance with section 903.16 or 903.17 of the Revised Code, or both sections as applicable.

(C) After receiving a written, signed and dated complaint, the director shall cause an investigation to be conducted to determine if a concentrated animal feeding facility is in compliance or to determine if a discharge is occurring or has occurred at an animal feeding operation.

(D) After receiving an oral complaint the director may cause an investigation to be conducted to determine if a concentrated animal feeding facility is in compliance or to determine if a discharge is occurring or has occurred at an animal feeding operation.

(E) If, upon completion of the investigation, the director determines that the concentrated animal feeding facility or animal feeding operation is in compliance with applicable requirements, the director shall dismiss the complaint and notify the complainant and the owner or operator of the dismissal.

(F) If the director determines that the concentrated animal feeding facility or animal feeding operation is not in compliance with applicable requirements, the director shall proceed in accordance with section 903.16 or section 903.17 of the Revised Code, or both sections as applicable.

(G) If the director determines that any person owning or operating a concentrated animal feeding facility is managing the facility in accordance with a permit or review compliance certificate currently approved by the director, the person shall be considered in compliance with the state rules. In a private civil action for nuisances involving activities conducted under this chapter, it is an affirmative defense if the person owning, operating or otherwise responsible for or in control of a concentrated animal feeding facility is operating under and in compliance with an approved permit or review compliance certificate.

Compliance with a NPDES permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 402, and 405(a)-(b) of the Federal Water Pollution Control Act.

However, a NPDES permit may be modified and reissued, or terminated during its term for cause as set forth in rules 901:10-1-03 , 901:10-1-09 , and 901:10-5-03 of the Administrative Code. Issuance of a NPDES permit does not convey any property rights of any type , or any exclusive privilege.

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Promulgated Under: 119.03

Statutory Authority: 903.08 , 903.10

Rule Amplifies: 903.01 , 903.02 , 903.03 , 903.04 , 903.07 , 903.08 , 903.082 , 903.09 , 903.10 , 903.12 , 903.15 , 903.16 , 903.17

Prior Effective Dates: 7/2/2002, 1/23/2009

901:10-5-02 Right to enter property for investigations and inspections.

.j) Investigations and inspections.

(1) The director at reasonable times has the authority to enter the premises of an applicant for permit or the permit premises to make investigations and inspections including, but not limited to, the sampling of discharges and the inspection of discharge monitoring equipment, or to otherwise execute duties that are necessary for the administration and enforcement of this chapter.

(2) The director at reasonable times may examine and copy any records pertaining to discharges that are subject to rule or any records that are required to be maintained by the terms and conditions of a permit or review compliance certificate issued under rule 901:10-1-07 of the Administrative Code.

(3) If refused entry, the director may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant.

(4) Any person to whom a permit or review compliance certificate has been issued is prohibited from refusing entry to the director or purposely hindering the director in the exercise of any authority granted as described in this rule.

(B) Biosecurity.

(1) Biosecurity refers to the policies and measures taken for protecting the food supply and agricultural resources from contamination.

(2) Upon entering the property of a facility, the inspector or investigator shall identify himself or herself with proper identification to prove that he or she is an agent of the Ohio department of agriculture.

(3) If an inspection is conducted prior to the application for a review compliance certificate or a permit under this chapter, the inspector or investigator shall notify the owner or operator in advance. The purpose of the notice is to inform the owner or operator of an inspection so that the inspector or investigator may be informed of the facility biosecurity procedures, if any. The director has the authority to authorize unannounced inspections or follow-up inspections of a facility as deemed necessary.

(4) If an owner or operator wants the Ohio department of agriculture to comply with its biosecurity plan, the owner or operator must submit its plan with the application for the permit to operate. If not, the department will act in accordance with its biosecurity policy.

Eff 7-2-02

Rule promulgated under: RC 119.03

Rule authorized by: RC 903.10

Rule amplifies: RC 903.12

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901:10-5-03 Enforcement procedures.

(A) Applicability. This rule applies to concentrated animal feeding operations, concentrated animal feeding facilities, and major concentrated animal feeding facilities.

(B) An agent or employee of the department shall conduct inspections and determine if the owner or operator is not in compliance with section 903.02 , 903.03 , or 903.04 or division (A) of section 903.07 of the Revised Code, the terms and conditions of a permit to install, permit to operate or review compliance certificate issued for the facility, including the requirements established under division (C) of section 903.06 , of the Revised Code, division (B) of section 903.08 of the Revised Code, or paragraph (D) of rule 901:10-1-10 of the Administrative Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules adopted under divisions (A), (B), (C), (D), (E), (F), or (J) of section 903.10 of the Revised Code. Violations shall be described in an inspection report.

(C) Upon observation by an agent or employee of the department during an inspection, through notification by another agency or through a written complaint from a person, the director will initiate an investigation in order to determine if there is a violation of Chapter 903. of the Revised Code and the rules adopted thereunder. Violations shall be described in an inspection report.

(D) If the inspection report indicates a violation, the director shall do the following:

(1) Evaluate the facts established by the inspection report.

(2) <http://schemas.microsoft.com/office/word/2003/wordml013fCommence> enforcement action commensurate with the nature and degree of the violation and consistent with the requirements of sections 903.16 , 903.17 , and 903.99 of the Revised Code.

(E) Penalties. Penalties assessed by the director shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with rule 901:10-5-04 of the Administrative Code.

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Prior Effective Dates: 7/2/2002, 9/15/2005

901:10-5-04 Civil penalties.

(A) Civil penalty rules applicability. For purposes of this rule, facility means concentrated animal feeding operations, concentrated animal feeding facilities, and major concentrated animal feeding facilities.

(B) Consolidation. Each and every day of violation of any rule or statute of Chapter 903. of the Revised Code is a separate and distinct offense, and in cases of continuing violations, each day's continuance is a separate and distinct violation unless otherwise determined by the department or unless the violations are of division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code. Proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.

(C) Hearing procedures. All adjudication hearings concerning violations cited in accordance with section 903.16 and section 903.17 of the Revised Code shall be conducted in accordance with Chapter 119. of the Revised Code. The director may consider the factors listed in paragraph (D)(1) of this rule in the adjudication hearing as presented by the parties.

(D) Civil penalty assessment.

The amount of a civil penalty shall be determined by the reasonable exercise of the director's discretion in considering the following factors

(1) The economic benefit (if any) resulting from the violation.

(2) The economic impact on the violator.

Comment: In considering economic impact, the director may consider such factors as cost of repairs, construction, installation including, but not limited to, installation of equipment, monitoring devices and related operational costs.

(3) Acts of nature or acts of third parties that resulted in or contributed to violations.

(4) Any history of such violations, including recalcitrance resulting in costs incurred by the director to enforce any previously issued final orders of the director.

(5) Any good-faith efforts to comply with applicable requirements.

(6) Any supplemental environmental projects that may be undertaken by the owner or operator to off-set some of the amount of civil penalty payable to the livestock management fund if the director finds that any project may enhance the owner's or the operator's compliance by undertaking a project that is beyond any work or activities required by law or if the director agrees that any proposed supplemental environmental projects will enhance the environment.

(7) The seriousness or magnitude of the violation or violations.

(8) The gravity of effect of the violation or violations.

(9) Such other matters as justice requires.

(E) Penalty matrix.

(1) Applicability. The director may use the penalty matrix contained in this paragraph to modify a penalty amount derived from paragraph (D) of this rule by following this procedure:

- (a) Determine the magnitude or seriousness of the violation as specified in paragraph (E)(2)(a) of this rule;
- (b) Determine the gravity of effect pertinent to the violation as specified in paragraph (E)(2)(b) of this rule; and
- (c) Determine whether the violation is the first violation or past violation, and modify the penalty amount by reference to the appropriate matrix contained in paragraphs (F) to (K) of this rule.

(2) Penalty matrix.

(a) Categories of magnitude or seriousness.

(i) Category I (major):

- (a) A violation of a department order issued as part of or in connection with a formal enforcement action;
- (b) Failure to provide access to premises or records when required by statute, rule or order;
- (c) Any discharge of manure that enters the waters of the state, either without a permit or from a point source not authorized by a permit unless the discharge has been reported as an emergency in accordance with rule 901:10-2-17 of the Administrative Code or unless discharge is an agricultural stormwater discharge as defined in paragraph (C) of rule 901:10-1-01 of the Administrative Code;
- (d) Submitting records, reports or application forms which are false, misleading, or fraudulent;
- (e) Failure to provide notification of a known spill or upset condition that results in a non-permitted discharge into waters of the state;
- (f) Failure to comply with division (A) of section 903.07 of the Revised Code;
- (g) The presence of insects or rodents indicating a failure to comply with the insect and rodent control plan approved by the director in accordance with rule 901:10-2-19 of the Administrative Code.
- (h) Failure to apply for applicable permits or review compliance certificate;
- (i) Installing or operating facilities regulated under Chapter 903. of the Revised Code prior to issuance of applicable permits;
- (j) Failure to provide corrections specified by the director's designated representatives on any applicable permits or review compliance certificate; or
- (k) Upon completing construction authorized by a permit to install, failure to comply with paragraph (B)(2) of rule 901:10-2-01 of the Administrative Code.

(ii) Category II (moderate):

- (a) Failure to submit a plan or report if required by permit or rule;
- (b) Placing manure such that manure is likely to enter the waters of the state by any means;
- (c) Any violation of a department rule or order that is not classified elsewhere in these rules as major or minor or any failure to operate in accordance with approved best management practices;
- (d) Failure to maintain the freeboard requirements of approved best management practices; or

(e) Failure to comply with the insect and rodent control plan approved by the director in accordance with rule 901:10-2-19 of the Administrative Code.

(iii) Category III (minor):

a) Any violation of record keeping requirements in approved best management practices.

(b) Failure to maintain records in accordance with rule 901:10-2-16 of the Administrative Code.

(b) Gravity. The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to the public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

(i) Gravity of effect high level:

(a) Significant risk of injury or actual injury to wildlife; or

(b) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment; or

(c) High risk of or actual zoonotic disease transmission as determined by the director upon consultation with federal, state or local health agencies.

) Gravity of effect medium level:

(a) Surface or groundwater contamination that causes short-term impact but does not meet the criteria of high level gravity of effect yet exceeds the definition of low gravity of effect and does not pose a significant threat to human health or the environment; or

(b) Insect and rodent populations in exceedance of target levels posing potential off-site impacts or posing a lower risk of zoonotic disease transmission.

(iii) Gravity of effect low level:

(a) Surface water contamination not found or not found at a level in excess of applicable water quality standards.

(b) Insect and rodent populations not found off-site but not in compliance with the approved plan for the facility.

(F) Civil penalty matrix for first violation of Chapter 903. of the Revised Code except violations of requirements for insect and rodent control plans which shall be assessed in accordance with division (B) (2) of section 903.16 of the Revised Code or violations of requirements for certified livestock managers which shall be assessed in accordance with division (B)(3) of section 903.16 of the Revised Code shall be assessed per day per violation.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low

Category I (Major)	Up to and including \$10,000	Up to \$3,200	Up to \$1,600
Category II (Moderate)	Up to \$2,400	Up to \$1,600	Up to \$800
Category III (Minor)	Up to \$1,000	Up to \$500	Up to \$200

(G) Civil penalty matrix in the event of past violations of Chapter 903. of the Revised Code (except violations of requirements for insect and rodent control plans which shall be assessed in accordance with division (B)(2) of section 903.16 of the Revised Code or violations of requirements for certified livestock managers which shall be assessed in accordance with division (B)(3) of the Revised Code) shall be assessed per day per violation.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$10,000	Up to \$6,000	Up to \$3,200
Category II (Moderate)	Up to \$6,000	Up to \$3,200	Up to \$1,600
Category III (Minor)	Up to \$3,000	Up to \$1,600	Up to \$400

(H) Civil penalty matrix for insect and rodent control plans. As set forth in division (D) of section 903.10 of the Revised Code, the director may use this penalty matrix to assess a preliminary penalty amount for enforcement of section 903.06 of the Revised Code and shall exercise reasonable discretion in accordance with paragraph (D) of this rule.

Concentrated animal feeding facility - civil penalty matrix for insect and rodent control first violation per seven days.

	Gravity of Effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$5,000	Up to \$2,500	Up to \$1,000
Category II (Moderate)	Up to \$2,500	Up to \$1,500	Up to \$500
Category III (Minor)	Up to \$1,000	Up to \$500	Up to \$200

(I) Concentrated animal feeding facility - civil penalty matrix for insect and rodent control in the event of past violations per seven days.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$10,000	Up to \$5,000	Up to \$2,000
Category II (Moderate)	Up to \$5,000	Up to \$2,500	Up to \$1,000
Category III (Minor)	Up to \$2,000	Up to \$1,000	Up to \$500

(J) Major concentrated animal feeding facility - civil penalty matrix for insect and rodent control first violation per seven days.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low

Category I (Major)	Up to \$12,500	Up to \$7,500	Up to \$4,000
Category II (Moderate)	Up to \$7,500	Up to \$4,500	Up to \$2,500
Category III (Minor)	Up to \$4,000	Up to \$2,500	Up to \$1,500

(K) Major concentrated animal feeding facility - civil penalty matrix for insect and rodent control in the event of past violations per seven days.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$25,000	Up to \$15,000	Up to \$7,500
Category II (Moderate)	Up to \$15,000	Up to \$9,000	Up to \$4,500
Category III (Minor)	Up to \$7,500	Up to \$4,500	Up to \$2,500

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Prior Effective Dates: 7/2/2002, 9/15/2005

901:10-5-05 Emergency enforcement and cost recovery.

(A) If the director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the director may issue an order without notice or adjudication hearing stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately. A danger to public health, safety or the environment may include, but is not necessarily limited to, the following situations:

- (1) When discharge threatens public or private drinking water supplies;
- (2) When discharge threatens waters of the state;
- (3) When the discharge directly causes flooding of residential housing, commercial property or industrial property, where direct use of the property would be hazardous to public health; and/or
- (4) Other situations as determined by the director upon consultation with state and/or local environmental protection or health agencies.

(B) Following receipt of the emergency order, the owner or operator shall comply with the order. The order shall take effect immediately, however, the owner or operator shall be afforded the opportunity for a hearing in accordance with paragraph (C) of this rule.

(C) On application to the director, the owner or operator shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. The director's order is appealable in accordance with section 119.12 of the Revised Code. The applicant shall provide the following information to the director in writing or by telephone:

- (1) A statement requesting an adjudication hearing;
- (2) The date when the order was issued; and
- (3) The business or home address and phone number where the owner, operator or representative can be reached during business hours.

(D) On the basis of the hearing, the director or his designee shall continue, revoke or modify the order. If the owner or operator does not request a hearing, the emergency order may remain in effect for one hundred twenty days after its issuance. An order issued following an adjudicatory hearing shall not be considered an emergency order. The appeal provisions described in paragraph (C) of this rule shall apply.

(E) A person responsible for causing or allowing an unauthorized release, spill or discharge of manure is liable to the director for any costs incurred in investigating, mitigating, minimizing, removing, abating the spill, release or discharge or other acts or events that resulted in the emergency and the emergency order. If no attempt is made to repay the director for costs incurred or damages assessed within that time, the director may request the attorney general to bring a civil suit against the person responsible to recover costs and any assessed damages. Reimbursed costs shall be deposited into the livestock management fund.

(F) Livestock management fund. Funds deposited in the livestock management fund created under section 903.19 of the Revised Code shall be used for paying the costs for emergency actions. In addition to paying the costs incurred by the director under section 903.18 of the Revised Code, the director may make

disbursements from the fund for any costs incurred by the department in investigating, mitigating, minimizing, removing, abating the release, spill or discharge or other acts or events that resulted in the emergency or the emergency order.

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